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MAY 14 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In re Applications of)	MM DOCKET NO. <u>92-50</u>
)	
GOLDEN CORNERS BROADCASTING, INC.)	File No. BPH-901218MH
)	
FISHER COMMUNICATIONS OF)	
CLEMSON, INC.)	File No. BPH-901219MB
)	
CLEMSON BROADCASTING, INC.)	File No. BPH-901219MD
)	
For a Construction Permit for)	
A New FM Station)	
Clemson, South Carolina)	

To: Administrative Law Judge
Walter C. Miller

MASS MEDIA BUREAU'S CONSOLIDATED COMMENTS
ON JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT
AND MOTION TO DELETE ISSUE UPON IMPOSITION OF CONDITION

1. On May 4, 1992, Golden Corners Broadcasting, Inc. ("GCBI"), Fisher Communications of Clemson, Inc. ("Fisher"), and Clemson Broadcasting, Inc. ("Clemson"), the applicants in the above-captioned proceeding (hereinafter "Petitioners"), filed a Joint Petition for Approval of Settlement Agreement, and, on May 8, 1992, Petitioners filed a Supplement. On May 8, 1992, GCBI and Clemson filed a Motion to Delete Issue Upon Imposition of Condition. The Mass Media Bureau submits the following consolidated comments.

2. Petitioners seek approval of their agreement to resolve the above-captioned proceeding by settlement. Pursuant to the

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agreement, Fisher's application would be dismissed, in exchange for consideration of \$7,617.47, ¹ and GCBI and Clemson would merge their interests into a new corporation which would prosecute GCBI's application. Petitioners have declared that approval of the agreement is in the public interest, that none of the applications was filed for an improper purpose, and that consideration to be received by Fisher does not exceed that applicant's legitimate and prudent expenses. The GCBI-Clemson merger appears bona fide. With respect to the payment to Fisher, it is the Bureau's view that Fisher's expenses have been adequately described, and appear legitimate, prudent, and related to the preparation, filing, prosecution, and settlement of Fisher's application. Compare Supplement, filed May 8, 1992, with Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits, 6 FCC Rcd 85, n. 54 (1990); Section 73.3525(i) of the Commission's Rules. In sum, the Joint Petition and supporting materials submitted by Petitioners satisfy the requirements of Section 73.3525 of the Commission's Rules, which implements Section 311(c)(3) of the Communications Act of 1934, as amended.

¹ Fisher is concurrently requesting the Commission's Managing Director to authorize a refund of its \$6,670.00 hearing fee. Thus, the reimbursement of that amount as part of the instant settlement agreement should not be allowed. Discounting that expense, Fisher is claiming \$7,617.47. See Petitioners' Supplement, filed May 8, 1992.

Thus, the Bureau supports approval of the Joint Petition.

3. The merged application, which is substituted for the GCBI application, is not grantable unless and until a pending air hazard issue is resolved in the applicant's favor. That issue relates solely to concerns about electromagnetic interference ("EMI"). In such instances, the Bureau supports favorable resolution of the issue, absent an objection from the Federal Aviation Administration, when the applicant agrees to the imposition of the following condition:

Upon receipt of notification from the Commission that harmful interference is being caused by the operation of the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.


GCBI and Clemson have requested deletion of the air hazard issue and imposition of the condition.


4. A motion to delete a designated issue will only be entertained upon a showing of unusual circumstances, such as occur when the Commission overlooked or misconstrued relevant information. See, e.g., Belo Broadcasting Corp., 68 FCC 2d 1313 (1978); Post-Newsweek Stations, Florida, Inc., 52 FCC 2d 883 (Rev. Bd. 1975). While such circumstances are not present here,

the fact remains that the merging applicants have agreed to the imposition of the above-cited condition. Thus, absent an objection by the Federal Aviation Administration, summary decision of the issue would be appropriate.

5. Finally, we note the need for an amendment to GCBI's application to substitute the merged applicant. Petitioners have indicated their intention to submit such an amendment. Supplement filed May 8, 1992, at p. 2. Subject to the filing, and acceptance, of such an amendment, the Bureau supports approval of the settlement agreement, dismissal of Fisher's application, and grant of the merged application.

Respectfully submitted,
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May 14, 1992

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 14th day of May, 1992, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Consolidated Comments on Joint Petition for Approval of Settlement Agreement and Motion to Delete Issue Upon Imposition of Condition" to:

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